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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

AHMED TASNEEM,

Plaintiff and Appellant,

v.

PAZ EILAT et al.,

Defendants and Respondents.

B197957

(Los Angeles County
Super. Ct. No. YC052821)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Bob T. Hight, Judge. Affirmed.

Wenzel & Associates and Kenneth J. Wenzel; Ahmed Tasneem, in pro per;
for Plaintiff and Appellant.

Schmid & Voiles, Suzanne De Rosa and Denise H. Greer for Defendants
and Respondents.

SUMMARY

The plaintiff attempted to file a defective request for entry of default judgment against the defendants, but her request was rejected. The defendants answered, attempted to conduct discovery, filed motions to compel when no responses were provided and later moved for summary judgment. The plaintiff filed multiple motions seeking entry of the defendants' default which the trial court denied, but failed to file substantive opposition to the defendants' motions. The trial court ultimately granted the defendants' summary judgment motions. The plaintiff appeals. We affirm.

FACTUAL AND PROCEDURAL SYNOPSIS

In March 2006, representing herself, Ahmed Tasneem filed a complaint alleging medical malpractice against Paz Eilat, M.D., and Western Medical Group. According to her complaint, she was injured in a fall at Royal[w]od Care Center where she worked as a certified nurse assistant. She subsequently treated with Dr. Eilat at Western Medical Group but her condition worsened and she began experiencing shortness of breath, depression, anxiety and "panic syndrome," "near syncopal episodes" and abdominal pain with "etiology unclear" as well as other symptoms as a result of Eilat's negligent care. Because she had no prior health problems, she said, "it is very reasonable to believe that her current health condition [is] the result of the above reported accident."¹

In July, Tasneem mailed a document to the court "request[ing] entry of default judgment" against Eilat and Western Medical, representing she had served these defendants with her complaint on May 11 by certified mail. On July 10, a courtroom assistant returned Tasneem's document, indicating: "Your Request for Entry of Default

¹ She said the first accident occurred in November 2002 as a result of her employer's negligence so she is still treating and receiving worker's compensation benefits; she said the second accident occurred in December 2002 when she reinjured her back in moving a patient as a result of Eilat's medical malpractice.

must be on Form #RFEOD1. You can get an original document in Room 100 of the Clerk's Office." She was directed to make the necessary corrections and resubmit new documents for filing. On July 17, she mailed new documents including a form request for entry of default, demanding judgment in the amount of \$750,342 plus interest at the rate of 15 percent. This document bears a stamp indicating that the court received it on July 20.

Meanwhile, on July 18, Eilat and Western Medical filed their answer. The court clerk prepared a "notice of rejection—default/clerk's judgment," advising Tasneem that her request for entry of default "submitted on 7-20-06" was rejected for the following reason(s): "Answer filed on 7-18-06 by all defendants prevents entry of default. (Code Civ. Proc., § 585[.])" In addition, another box was marked indicating "The original Proof of Service has not been filed. (Code Civ. Proc., § 417.30[.])"

On August 21, Tasneem filed a "request with justification for entry of default judgment against the default defendants." She attached her U.S. Postal Service certified mail receipt and requested that the court take notice she had mailed her document to the court on July 17, not July 20. On September 21, the trial court heard from Tasneem's husband on Tasneem's behalf.² As stated in the court's minute order, the court explained that Tasneem's mail receipt indicated delivery to the court after the filing of the defendants' answer, and Tasneem had no authority for the relief she sought. In addition, she had failed to submit proof of service of her motion.³

On October 6, Tasneem filed another "motion of justification for entry of default judgment," indicating there was no justification for the defendants' untimely filed answer. The matter was set for hearing on November 30. The defendants' motions to compel responses to their interrogatories and requests for production of documents and requests for sanctions were set for hearing on that date.

² Previously she had submitted a document indicating she needed an Urdu interpreter.

³ There was no appearance on defendants' behalf.

Meanwhile, on October 27, Eilat and Western Medical filed motions for summary judgment (set for hearing three months later). In the supporting expert declaration, Michael Waldman, M.D. recounted Tasneem's care and treatment with Eilat and Western Medical and opined, based on his review of Tasneem's medical records, Eilat and Western Medical complied with the standard of care; none of their actions or inactions caused or contributed to Tasneem's injuries.⁴

Tasneem filed more documents indicating "non-justifiable an action to entertain and to accept for process a (time-barred) answer"

Eilat and Western Medical filed opposition, arguing Tasneem's motion was a motion for reconsideration unsupported by any new facts and requesting sanctions in the amount of \$620 for filing a frivolous motion. Attachments to defense counsel's declaration included correspondence referencing prior letters objecting to Tasneem's repeated failures to serve defendants with notice of motions and other documents.

On the November 30 hearing date, Tasneem filed additional documents urging entry of the defendants' default because, she said, the court exceeded its jurisdiction in accepting the answers for filing. The court again allowed Tasneem's husband to argue on her behalf. Again, the court explained that Tasneem had no authority for the relief she was seeking, she had failed to provide new or different facts in seeking reconsideration of the court's prior ruling on the "exact" same motion and she had again failed to submit proof of service. The request for sanctions in connection with Tasneem's motion was denied without prejudice. Eilat's and Western Medical's motions to compel Tasneem's discovery responses were granted, and she was ordered to pay sanctions in the amount of \$700.⁵

⁴ Eilat and Western Medical Group subsequently filed additional motions seeking judgment on statute of limitations grounds.

⁵ The court stated: "The court is sympathetic with the position that a pro per is in, somebody who is not familiar with the law, and certainly, we give every consideration we can to that fact. On the other hand, I think I've answered completely the assertions that you're making in my ruling."

On December 11, Tasneem filed another “motion to reconsider and revoke prior order” on the ground the court “erred in admitting untimely answer” Again, Eilat and Western Medical filed opposition and sought sanctions in the amount of \$930. On the January 16, 2007 hearing date, Tasneem filed additional documents “related for . . . ‘entry of default judgment.’”⁶ This time, Tasneem and her husband were accompanied by a certified interpreter (Hardeep Arora). For a third time, the court read its tentative ruling denying Tasneem’s request to enter default and heard argument. Tasneem argued that her request had actually been filed on July 5, 2006, although the clerk had rejected it. The court adopted its tentative ruling as its order, denying Tasneem’s motion and ordering her to pay sanctions in the amount of \$930 to defense counsel.

On January 18, the hearing date on the defense summary judgment motions, Tasneem submitted a “statement in reply,” in which she said Eilat and Western Medical were using “certain legal mumbojumbo as a weak defense argument” as her rights were clearly violated because she was returned to work despite her injuries and is now permanently disabled. She said she was the sole supporter of her mentally disabled son and disabled husband and needed financial support for her family’s survival. After reading its tentative ruling indicating that the defendants had met their burden to establish Tasneem could not establish the elements of her cause of action and Tasneem had not met her burden to provide specific facts demonstrating a triable issue of material fact, the court heard argument from Tasneem and her husband and then granted Eilat’s and Western Medical’s summary judgment motions. “You’ve chosen to represent yourself in one of the most difficult things you can possibly have, that’s medical malpractice. I have to follow the law.” Tasneem appeals from the subsequently entered judgments.⁷

⁶ In the interim, Tasneem had filed a motion for an extension to pay sanctions and respond to discovery which was denied upon the absence of good cause or authority.

⁷ She filed a number of other post-judgment requests, seeking to transfer the matter to another department among other things.

DISCUSSION

In her opening brief, Tasneem renews her argument that the trial court lacked jurisdiction to accept the defendants' answer. We disagree.

Apparently confusing the difference between the *filing* of a document with the court and *service* by mail of a document (on a party), Tasneem insists that her form request for entry of default was filed on July 17 (the day she placed it in the mail) and therefore the defendants' answer could not have been filed the following day. As set forth in our factual summary, the record does not support Tasneem's contention. To the extent she attempts to argue that default should have been entered on July 5 with her original submission, she ignores the multiple deficiencies in this request. There she sought the entry of default *judgment* against "defendants" without having first requested entry of default, without providing proper proof of service and without serving the defendants with a statement of damages as required under Code of Civil Procedure section 425.11. In a personal injury action, the defendants must be served with a statement of damages *before* default may be entered. (Code Civ. Proc., § 425.11, subd. (c).) As the defendants' answer was filed on July 18, Tasneem's subsequent request for entry of default was properly rejected. (*Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 144.)

Citing their answer and the declaration in support of their summary judgment motion, Tasneem further reiterates that the defendants "irrationally denied" her injuries and "did not present any solid evidence except using certain legal mumbojumbo as a very weak defense argument." They "cut[] corners to save [a] few bucks." To the extent Tasneem contends the trial court erred in granting summary judgment in favor of Eilat and Western Medical, she is wrong. Here, as required in a medical malpractice case, the defendants supported their summary judgment motion with expert opinion testimony that the defendants had performed in accordance with the standard of care and did not cause or contribute to Tasneem's injuries. (See *Kelly v. Trunk* (1998) 66 Cal.App.4th 519,

523.) Tasneem failed to present any evidence to the contrary. She has failed to demonstrate error.

Finally, to the extent Tasneem asks that the sanctions orders “be waived off,” she has failed to provide any authority or argument demonstrating prejudicial error in this regard.

DISPOSITION

The judgments are affirmed. Respondents are entitled to their costs of appeal.

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WOODS, J.

We concur:

PERLUSS, P.J.

JACKSON, J.